

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

THIS DOCUMENT RELATES TO:

ALL DIRECT PURCHASER ACTIONS

) Case No. 3:07-cv-05944-JST
)
) MDL No.: 1917
)
)
)
**) DECLARATION OF DONALD
CLARKE IN SUPPORT OF IRICO
DEFENDANTS' MOTIONS TO
DISMISS FOR LACK OF
JURISDICTION**
)
)

1 I, Donald Clarke, declare as follows:

2 1. I make this declaration in support of the motions to dismiss of Irico Group
3 Corporation (“Irico Group”) and Irico Display Devices Co., Ltd. (“Irico Display” and, together
4 with Irico Group, the “Irico Defendants”).

5 2. I am a professor of law at the George Washington University Law School,
6 where I have been employed since 2005. My academic specialization is the law of the People’s
7 Republic of China in general and the legal regime of Chinese economic reform in particular. I
8 speak and read Chinese fluently.

9 3. From 1988 through 2004, I was on the faculty of the University of Washington
10 School of Law (“UWLS”), and I have been a visiting professor at New York University Law
11 School, University of California at Los Angeles School of Law, and Duke Law School. From
12 1995 to 1998, I was on a leave of absence from the UWLS and worked as an attorney at Paul,
13 Weiss, Rifkind, Wharton & Garrison (“Paul, Weiss”), a large United States law firm with a
14 substantial China business practice. During that period, I visited China and Hong Kong
15 approximately twice a year in the course of my work, a substantial amount of which was
16 related to China. From 1998 through 2003, I regularly worked with Paul, Weiss as a consultant
17 on Chinese law matters. Since that time I have maintained an independent consulting practice.

18 4. I have published widely in the field of Chinese law; a full copy of my
19 curriculum vitae and list of publications is set forth in my curriculum vitae, attached hereto as
20 Exhibit 1.

21 5. I graduated *cum laude* from Harvard Law School in 1987, where my studies
22 focused on East Asian legal systems and I served as an editor of the *Harvard Law Review*. I
23 earned a graduate degree (M.Sc. with Honors) in the Government and Politics of China from
24 the School of Oriental and African Studies at the University of London in 1983. I also studied
25 Chinese history for two years at Beijing University and Nanjing University in China from 1977
26 to 1979. I earned my undergraduate degree from Princeton University in 1977.

27 6. I have served as adviser or consultant on Chinese law matters to a number of
28 bodies, including the Asian Development Bank, the Agency for International Development, and

1 the World Bank's Financial Sector Reform and Strengthening Initiative. I have testified on
2 aspects of the Chinese legal system before the Congressional-Executive Commission on China
3 and the United States-China Economic and Security Review Commission. I have been
4 appointed to the Academic Advisory Group to the US-China Working Group of the United
5 States Congress. I am admitted to practice in the State of New York (1988) and am a member
6 of the Council on Foreign Relations.

7 7. I have been asked by counsel for the Irico Defendants to examine and comment
8 on materials relating to Irico Group and Irico Display, their relationship to each other, and their
9 relationship to the Chinese state in order to assist the court in determining whether Irico Group
10 and Irico Display are agencies or instrumentalities of a foreign state for purposes of the Foreign
11 Sovereign Immunities Act.

12 8. In the course of preparing this declaration, I have examined the following
13 documents, among others, in whole or in part:

- 14 a. The set of documents provided by the Irico Defendants in this case
15 numbered IRI-CRT-00000001 through IRI-CRT-00001029 (the "IRI-
16 CRT Documents").
- 17 b. Irico Defendants' Objections and Responses to Direct Purchaser Plaintiff
18 Studio Spectrum, Inc.'s First Set of Interrogatories, dated May 4, 2018.
- 19 c. Global Offering Prospectus of Irico Group Electronics Company
20 Limited, dated Dec. 8, 2004 (the "Irico Electronics Prospectus")
- 21 d. The business licenses of Irico (Hefei) Photovoltaic Co. Ltd., Hefei Irico
22 Blu-ray Science & Technology Co. Ltd., and Irico (Hefei) LCD Glass
23 Co. Ltd.
- 24 e. The Declaration of Mengquan Guo in Support of Irico Defendants'
25 Motions to Dismiss for Lack of Jurisdiction (the "Guo Declaration").
- 26 f. The Declaration of Zhaojie Wang in Support of Irico Defendants'
27 Motions to Dismiss for Lack of Jurisdiction.
- 28 g. Other materials cited in this declaration.

1 9. All translations of Chinese into English in this declaration are my own or have
 2 been personally reviewed by me and are in my opinion accurate.

3 **A. State ownership in China**

4 10. In 1978, at the beginning of the post-Mao era of economic reform, “China’s
 5 industry was made up of thousands of similar, publicly owned organizations.”¹ Production was
 6 carried out by government ministries; the Ministry of Chemical Industry, for example, was not
 7 so much the *regulator* of the chemical industry as it simply *was* the chemical industry. State-
 8 owned enterprises (“SOEs”) in a given sector operated under the jurisdiction of the relevant
 9 ministry, and were essentially factories within the conglomerate that was the ministry.²

10 11. As described by a leading expert on the Chinese economy, Professor Barry
 11 Naughton of the University of California at San Diego,

12 The traditional SOE—the “work unit” integrated into the government bureaucracy—
 13 dominated the scene, as it had since the 1950s. SOEs produced 77% of industrial
 14 output.³

15 12. In addition to production, SOEs performed substantial social and political
 16 functions, such as overseeing workers’ health, welfare, personal lives, and political
 17 indoctrination.

18 13. Economic reform in the 1980s and 1990s allowed more non-SOEs to operate in
 19 the industrial economy, such that the SOE share of total output fell from 77% in 1978 to 33%
 20 in 1996.⁴ Furthermore, SOEs underwent organizational reforms. Instead of being a factory
 21 within a ministry conglomerate, SOEs were re-organized into companies with shares. This
 22 reorganization did not change the substance of state ownership; the shareholders were state
 23 organs (for example, the central ministry in charge of the enterprise).

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 25 ¹ BARRY NAUGHTON, THE CHINESE ECONOMY: TRANSITIONS AND GROWTH 299 (2007).

26 ² In Naughton’s words, “The enterprise was like a branch plant of the single vast undertaking
 27 that was Socialism, Incorporated.” *Id.* at 308.

³ *Id.*

⁴ See *id.* at 300.

1 14. The 1990s saw a gradual change in the role of ministries, with an effort to
 2 transform them from *participants in* industry to *regulators of* industry. Many ministries were
 3 abolished, and large conglomerates (often known as group companies) were established to take
 4 over their productive functions. At the central level, formal ownership of these companies was
 5 often lodged in China's State Council (particularly in cases where the original ministry had
 6 disappeared).

7 15. In 2003, concomitant with the establishment of the State-Owned Assets
 8 Supervision and Administration Commission ("SASAC"), nominal ownership of industrial
 9 enterprises owned by the Chinese state at the central level was transferred from the entity then
 10 holding it (in many cases, the State Council) into the hands of SASAC. This transfer was purely
 11 a matter of internal management by the central state of its enterprises and in no way affected
 12 the governmental character of the state owner. SASAC is a governmental body under the State
 13 Council much like a regular ministry.⁵ In Naughton's words, "SASAC's core mission is to
 14 carry out the government's functions as investor and owner of state assets, and thus separate
 15 these tasks from the government's role as public manager of society as a whole."⁶ The
 16 "government functions as investor and owner of state assets" referred to by Naughton are not,
 17 however, simply the pursuit of profit, as will be explained below.

18 16. Despite decades of economic reform in the post-Mao era, the Chinese state still
 19 participates extensively in the Chinese economy. Part of this participation is via direct and
 20 indirect ownership of productive enterprises. The Chinese government has continuously
 21 repeated that this policy of extensive enterprise ownership will continue and that the state has
 22 no intention of changing it. As I wrote in 2010:
 23 The state remains firmly committed to retaining control over enterprises in several
 24 sectors: national security-related industries, natural monopolies, sectors providing

25 ⁵ See *id.* at 302-03; see generally Barry Naughton, *The Transformation of the State Sector:*
 26 *SASAC, the Market Economy, and the New National Champions*, in STATE CAPITALISM,
 27 INSTITUTIONAL ADAPTATION, AND THE CHINESE MIRACLE 46 (Barry Naughton & Kellee S. Tsai
 ed. 2015)

28 ⁶ BARRY NAUGHTON, *supra* note 1, at 316.

1 important goods and services to the public, and important enterprises in pillar industries
 2 and the high-technology sector.⁷

3 17. The fact that this firm policy of enterprise ownership exists necessarily implies
 4 that the state's goals in owning enterprises are not purely commercial. As I wrote in 2003:

5 The state wants the enterprises it owns to be run efficiently, but not solely for the
 6 purpose of wealth maximization. If the state owned simply for the purpose of
 7 maximizing the economic value of its holdings, there would be no need for a policy
 8 mandating state ownership of enterprises. If the enterprise would be worth more
 9 managed by another, the state should seek a share of that increased value by selling. A
 10 policy of wealth maximization for the state requires simply that the state acquire,
 11 maintain, or relinquish control according to whatever will realize the most wealth for
 12 the state.

13 Because the Chinese government clearly does not have such a policy, it follows
 14 that a necessary element of state control of an enterprise must be the use of that control
 15 for purposes other than the maximization of its wealth as a shareholder—purposes such
 16 as the maintenance of urban employment levels, direct control over sensitive industries,
 17 or politically-motivated job placement.⁸

18 18. Thus, while it is clear that enterprises with direct and indirect state investment
 19 are generally expected to make money (whether or not they actually do so), it is equally clear
 20 that if making money were the sole goal, there would be no need for a policy mandating state
 21 investment in specific sectors or indeed in any sector. Nor does the existing policy single out
 22 especially profitable sectors. Instead, it singles out sectors believed by the government to be of
 23 strategic importance to the state, such as national defense and high technology.

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 25
 26 ⁷ Donald C. Clarke, *Law Without Order in Chinese Corporate Governance Institutions*, 30 NW.
 27 J. INT'L L. & BUS. 131, 144 (2010).

28 ⁸ Donald C. Clarke, *Corporate Governance in China: An Overview*, 14 CHINA ECON. REV. 494,
 494-95 (2003) (internal citations omitted).

1 **B. Status of Irco Group**

2 19. Relevant documents show that as of 2007, Irco Group was directly owned by
3 the Chinese state, with no intermediate corporate layers.

4 20. An Irco Group document from 2000 (a report to the Ministry of Finance) states
5 that Irco Group is a “wholly state-owned enterprise.”⁹ It further identifies the investor as the
6 State Council,¹⁰ the highest executive body in the Chinese government.

7 21. As part of the reform in the state’s system for managing SOEs discussed in
8 Paragraph 15 above, nominal ownership of Irco Group in 2003 passed from the State Council
9 to SASAC, as shown by a SASAC document of that year.¹¹ As the relevant document makes
10 clear, SASAC is to represent the State Council in carrying out the functions of the investor.¹²

11 22. A number of documents show SASAC exercising close control and supervision
12 over Irco Group.

- 13 a. Various SASAC documents show SASAC auditing the accounts of Irco
14 Group over the years.¹³
- 15 b. A 2004 SASAC document shows SASAC approving Irco Group’s
16 reorganization plan.¹⁴
- 17 c. Two 2005 SASAC documents show SASAC exercising supervision over
18 salaries of senior Irco Group officers.¹⁵

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⁹ Declaration of Stuart Plunkett in Support of Irco Defendants’ Motions to Dismiss for Lack of
Subject Matter Jurisdiction (“Plunkett Decl.”), Ex. 4, at -513.

21 ¹⁰ *Id.* at -515.

22 ¹¹ See Plunkett Decl., Ex. 29, at -642.

23 ¹² The list in which Irco Group’s name appears is entitled “List to Be Issued of Enterprises in
Which the State Council’s State-Owned Assets Supervision and Administration Commission Is
to Perform the Functions of Investor.” *Id.* at -636. Because enterprises in Chinese corporate
groups often have confusingly similar names, the purpose of this document was to ensure that
the names of the listed enterprises were exactly correct before the list was formally announced.

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26 ¹³ See Plunkett Decl., Ex. 21 (2003 results); Plunkett Decl., Ex. 22 (2004 results); Plunkett
Decl., Ex. 23 (2005 results); Plunkett Decl., Ex. 24 (2006 results).

27 ¹⁴ See Plunkett Decl., Ex. 25.

28 ¹⁵ See Plunkett Decl., Ex. 27; Plunkett Decl., Ex. 17.

- 1 d. A 2005 SASAC document shows SASAC directly appointing senior
- 2 officers of Irico Group. Xing Daoqin is appointed general manager (chief
- 3 executive officer) and Fu Jiuquan is appointed chief accountant. Ma
- 4 Jinquan is removed from his position as general manager.¹⁶
- 5 e. A 2005 SASAC document shows SASAC directly appointing Tang Rui
- 6 as a member of Irico Group's board of supervisors.¹⁷
- 7 f. Two SASAC documents show SASAC evaluating and scoring the
- 8 performance of Irico Group's management team over the previous
- 9 year.¹⁸
- 10 g. A 2006 SASAC document shows SASAC exercising control over the
- 11 total wage bill of Irico Group.¹⁹
- 12 h. A 2006 SASAC document shows SASAC instructing Irico Group to pay
- 13 what are in effect dividends to the state.²⁰

14 23. Irico Group remained directly under SASAC from that time until 2013, when its
15 nominal ownership was transferred to China Electronics and Information Industry Group
16 Corporation, another wholly state-owned enterprise directly under SASAC.²¹

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21¹⁶ See Plunkett Decl., Ex. 45, at -867 Because the documentation in this case sometimes shows
22 Chinese surnames before the given name and sometimes after, here and elsewhere I have
underlined the surname in order to avoid confusion.

23¹⁷ See Plunkett Decl., Ex. 18.

24¹⁸ See Plunkett Decl., Ex. 26 (2005); Plunkett Decl., Ex. 28 (2006).

25¹⁹ See Plunkett Decl., Ex. 15.

26²⁰ See Plunkett Decl., Ex. 16.

27²¹ See *Irico Group Corp. To Be Wholly Transferred Into China Electronics and Information*
28 *Industry Group Co. Ltd.*, SASAC (Jan. 5, 2013),
<http://www.sasac.gov.cn/n2588035/n2641579/n2641660/c3753687/content.html>
[<https://perma.cc/ZQ2Q-JDQW>] (announcement on SASAC website).

1 **C. Official status of Irico Display**

2 24. In my opinion, based on the evidence that I have reviewed and my knowledge of
 3 Chinese law, Irico Display was, before and during 2007, officially considered at the very least a
 4 state-controlled entity, and in some contexts a state-owned entity.

5 25. In 1995, Irico Display was unquestionably considered “state-owned” by
 6 SASAC’s predecessor, the State Bureau for the Management of State-Owned Assets.²² Irico
 7 Display proposed to issue shares to the public, thus decreasing the state’s ownership
 8 percentage. In order to prevent economic dilution, the state’s policy in such cases was to insist
 9 on an asset appraisal and thereby to prevent shares being issued to management and favored
 10 buyers at too low a price. A document from SASAC at the central level instructs the Shaanxi
 11 Province SASAC to undertake the appraisal.²³

12 26. In 2006, when Irico Display proposed to reform its shareholding structure and
 13 eliminate non-circulating shares,²⁴ SASAC’s approval was again needed.²⁵

14 27. Irico Display is described as “state-controlled” in Irico Group’s 2007 audit
 15 report, covering the year 2006.²⁶

17 ²² It would *a fortiori* have been considered “state-controlled.” A document issued in 1994 by
 18 the same body defined “control” as including any ownership stake of over 30 but less than 50
 19 percent where the state still exercises control because the other shareholding is dispersed. See
*Temporary Management Measures for State-Owned Shareholding in Share-Issuing Limited
 Liability Companies*, STOCKSTAR.COM (Nov. 3, 1994),
<http://school.stockstar.com/GA2001070400004853.shtml> [https://perma.cc/5T7F-3BQN], art.
 11.

22 ²³ See Plunkett Decl., Ex. 14. Although China is constitutionally a unitary state, state-owned
 enterprises are not always owned by the state at the central level. Sub-central SASACs have
 been established to act as nominal shareholders of enterprises owned by sub-central
 administrative units of the state—for example, provinces. The Shaanxi SASAC acts as the
 nominal owner of state-owned enterprises under the jurisdiction of Shaanxi province.

25 ²⁴ For an explanation of the purpose of this reform in Irico Display and other companies, see
 generally Horace W.H. Yeung, *Non-Tradable Share Reform in China: Marching Towards the
 Berle and Means Corporation?* (Osgoode Hall Law School, Comparative Research in Law &
 Political Economy, Research Paper No. 48, 2009), available at <http://bit.ly/splitshare>.

27 ²⁵ See Plunkett Decl., Ex. 20.

28 ²⁶ See Plunkett Decl., Ex. 55, at 14 (Irico Group Audit Report 2007 (for 2006)).

1 28. According to the Audit Law²⁷ and the Audit Law Implementing Regulations
 2 (“ALIR”),²⁸ Irico Display was and is subject to auditing in the same way a wholly state-owned
 3 enterprise is. Article 19 of the ALIR states in relevant part that “an enterprise . . . in which
 4 state-owned capital occupies a controlling position or a leading position” (a concept from
 5 Article 21 of the Audit Law) includes an enterprise “in which state capital constitutes 50% or
 6 less of the capital stock of the enterprise . . . , but the holder of the state capital possesses actual
 7 control.”²⁹ It further states that such an enterprise must be audited in accordance with the
 8 provisions of Article 20 of the Audit Law—*i.e.*, it must be audited in the same way a wholly
 9 state-owned enterprise would be.

10 29. Confirming the above analysis, in 2007, Irico Display was audited under the
 11 Audit Law. In the cover pages of its 2007 audited financial report, its “Economic Type” is
 12 stated to be “state-owned (*guoyou*)/state-controlled (*guoyou konggu*).”³⁰ This document also
 13 shows that the relationship between Irico Group and Irico Display was sufficiently close that
 14 Irico Group was required to consolidate Irico Display’s financial results with its own for
 15 accounting purposes. At that time (as well as before and after), Chinese accounting standards
 16 required consolidated reporting when one company exercised actual control over another.³¹

17 30. The document itself is labeled “Printed by the State-Owned Asset Supervision
 18 and Administration Commission,” indicating SASAC’s close connection with Irico Display,
 19 not just its grandparent, Irico Group.

20 ²⁷ As amended Feb. 28, 2006; available at
 21 <http://www.audit.gov.cn/n6/n36/c45865/content.html>.

22 ²⁸ See Plunkett Decl., Ex. 3, art. 19 (as amended, Feb. 2, 2010).

23 ²⁹ I have omitted irrelevant language about financial institutions.

24 ³⁰ See Plunkett Decl., Ex. 32, at -671, right-hand column, row 6. The “*guoyou konggu*,”
 25 translated here as “state-controlled,” means “controlled by state or state-owned entities.”

26 ³¹ See Enterprise Accounting Standards No. 33—Consolidated Financial Reports (Feb. 15,
 27 2006), available at <https://perma.cc/Z75C-RDEN> (in Chinese; partial English translation
 28 available at <https://perma.cc/SYR8-SYSM>). This document was superseded by a revised set of
 29 standards effective July 1, 2014. See *Notice on Revisions to the “Enterprise Accounting
 30 Standards No. 33—Consolidated Financial Reports”*, Ministry of Finance of the PRC (Feb. 17,
 31 2014), http://kjs.mof.gov.cn/zhangwuxinxi/zhangcefabu/201402/t20140220_1045206.html
 [<https://perma.cc/5V3Q-BA6T>].

1 **D. Control over Irico Display by Irico Group**

2 31. The evidence shows that Irico Group exercised direct control over personnel
 3 appointments at Irico Display in the late 1990s and in 2007. I know of no reason to believe it
 4 did not also exercise such control in the intervening years.

- 5 a. In 1998, Irico Group formally nominated Zhang Shaowen to a position
 6 on the Board of Supervisors.³²
- 7 b. In 1998, Irico Group issued a notice to the Board of Directors of Irico
 8 Display selecting its own legal representative, Wu Weiren, as the
 9 chairman of the board of directors of Irico Display, instructing it to
 10 confirm according to legal procedures.³³
- 11 c. In 1999, Irico Group issued a document to the board of directors of Irico
 12 Display instructing it to put some persons on the board and to remove
 13 others, and naming a chairman of the board.³⁴
- 14 d. On November 12, 2007, members of Irico Group’s Leadership Office
 15 Meeting issued a resolution on personnel appointments and dismissals in
 16 Irico Display.³⁵ The resolution recommended Xing Daoqin, Guo

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 18 ³² See Plunkett Decl., Ex. 33, at -676.

19 ³³ *Id.* at -677.

20 ³⁴ Plunkett Decl., Ex. 45, at -871.

21 ³⁵ See Plunkett Decl., Ex. 33, at -678. The members consisted of Irico Group’s senior
 22 management: the general manager, three deputy general managers, and the Group’s Communist
 23 Party secretary (concurrently a deputy general manager) and deputy secretary. Although this
 24 document refers only to “the stock company (A-shares)” and does not refer to Irico Display by
 25 name, I believe that the entity referred to is indeed Irico Display and not any other entity. Irico
 26 Display’s Annual Report for 2007 shows the nominated individuals as all having been
 27 subsequently appointed to their respective positions on November 29, 2007. Furthermore, none
 28 of the individuals whose removal was recommended appear on the Annual Report’s list of
 directors and officers, indicating that the removal recommendations were followed as diligently
as the appointment recommendations. See Plunkett Decl., Ex. 2, at -241. Finally, I note that the
2004 Irico Electronics Prospectus at page 11 defines “A Share Company” (meaning “the
company with A-shares”) as Irico Display. Irico Electronics is a direct subsidiary of Irico
Group, *see infra* ¶ 40. “A-shares” are freely circulating shares in Chinese companies sold on
China’s domestic stock exchanges. Irico Electronics itself is an “H-share” company, with its
publicly circulating shares listed on the Hong Kong Stock Exchange; thus, the reference could

Mengquan, and Zhang Shaowen to the position of director; Xing Daoqin to the position of chairman of the board, and Guo Mengquan to the position of deputy chairman. It further recommended that three named persons no longer serve as directors. It recommended that Wang Ximin be named general manager, Li Miao be named deputy general manager, and Jiang Ahe be named chief financial officer, and recommended that four named individuals be removed from their management positions. (That “recommendations” were in fact instructions to be followed is evident from the fact that all the recommended appointments and dismissals had taken place by the end of the month.³⁶) As can be seen, Irico Group was appointing not only directors, but also senior management, a task that as a formal matter is under the jurisdiction of the board of directors.

32. Irico Display’s 2007 annual report, which contains disclosures mandated and enforced under China’s regime for securities regulation, states unequivocally that while the controlling shareholder is Irico Group Electronics Co., Ltd., the actual controlling person (*shiji kongzhi ren*) is Irico Group.³⁷

33. Documents show that in 2011 and 2012, the performance of Irico Display’s management was directly evaluated by Irico Group.³⁸

34. Irico Group’s close connection with Irico Display is also shown by the fact the Irico Group directly guaranteed loans made to Irico Display.³⁹

not have been to Irico Electronics.

³⁶ See *id.* at -241.

³⁷ *Id.* at -239. Note that the English translation is incorrect: the purpose of the disclosure is to reveal who actually controls the company, and the actual controller need not, of course, be a shareholder. The Chinese text calls for identification of the “actual controlling person” (*shiji kongzhi ren*). Elsewhere in the same document, Irico Group is identified as the “ultimate controlling company” (*zuizhong konggu gongsi*) of Irico Display. *Id.* at -312.

³⁸ See Plunkett Decl., Ex. 47 (2011); Plunkett Decl., Ex. 56 (2012).

³⁹ See Plunkett Decl., Ex. 55, at 14 (Irico Group Audit Report 2007 (for 2006)).

1 35. I have reviewed the Guo Declaration and find that its statements regarding the
 2 control exercised by Irico Group over Irico Display are consistent with and supported by the
 3 documentary evidence I have examined.

4 **E. Status of Irico Display's officers under China's Criminal Law**

5 36. In my opinion, Irico Display's senior management (directors and senior
 6 executives) would have been considered state personnel in 2007 for the purposes of China's
 7 Criminal Law. In a number of places, China's Criminal Law specifies that it is a crime for state
 8 personnel (*guojia gongzuo renyuan*) to commit various acts, or that an act will be punished
 9 more severely when committed by state personnel. Thus, it is critical to be able to distinguish
 10 those who are state personnel from those who are not.

11 37. I have examined three criminal cases that shed light on this issue particularly as
 12 it pertains to Irico Display. In all three cases, defendants who were senior managers at
 13 companies associated with Irico Group were found guilty of receiving bribes as state personnel.
 14 They were found to be state personnel by virtue of their connection with the state via their
 15 immediate employer and Irico Group. Moreover, in all three cases the claim that they were
 16 state personnel was specifically contested by the defendant, and the defendant's position was
 17 rejected both at the trial level (with one exception) and at the appellate level (with no
 18 exceptions). Although these cases were decided after 2007, the critical year for this case, I have
 19 no reason to believe that official policy or treatment by courts of the relevant issues would have
 20 been different in 2007.

21 38. At the time of the cases in question, China's Criminal Law defined "state
 22 personnel" as follows:

23 "State personnel" as used in this Law means persons performing official duties
 24 (*gongwu*)⁴⁰ in state organs.

25

26 ⁴⁰ This term, translated here as "official duties," is not precisely defined in Chinese law. It is
 27 commonly understood that it would include the chief executive officer but not the maintenance
 28 worker. When applied to enterprise personnel, the general idea is that it designates someone
 who has significant decision-making authority over assets directly or indirectly owned by the
 state. *See generally Commentary on State Personnel in the Criminal Law, PEOPLE'S*

1 Persons who perform official duties in state-owned companies, enterprises, and
 2 institutions and people's organizations; persons who are dispatched by state-owned
 3 companies, enterprises, and institutions to perform official duties in non-state-owned
 4 companies, enterprises, institutions, and social groups; and other persons who perform
 5 official duties according to law shall be treated as state personnel.⁴¹

6 39. The Criminal Law's definition of "state personnel" was further supplemented by
 7 a 2010 document issued jointly by the Supreme People's Court and the Supreme People's
 8 Procuratorate (in charge of prosecutions) (the "2010 Opinion").⁴² The 2010 Opinion defines
 9 "state personnel" as follows:

10 Persons who perform official duties in state-controlled companies,⁴³ state-
 11 participating companies, or the branches of either, and who hold their positions as a
 12 result of nomination, recommendation, appointment, approval, etc. by state organs or
 13 state-owned companies, enterprises, or institutions, should be considered state
 14 personnel. They shall be so considered regardless of the specific appointing organ or
 15 method of appointment.

16 Those who, upon approval or decision after study of the organization in charge
 17 of management and oversight of state-owned assets in enterprises with state investment
 18 (*guojia chuzi qiyi*),⁴⁴ represent [the organization] in organizational, leadership,

19 PROCURACY, No. 11, 2013, available at http://www.sohu.com/a/197386126_654603
 20 [https://perma.cc/B3UQ-E85G].

21 ⁴¹ Criminal Law, as amended through Feb. 25, 2011, art. 93.

22 ⁴² See Plunkett Decl., Ex. 1.

23 ⁴³ A state-controlled company is one in which the state, directly or indirectly, holds a majority
 24 of the shares or in which the state exercises a controlling influence, despite not holding a
 25 majority of shares. A state-participated company is a company in which the state holds shares
 26 but does not have control. See Letter from the State Bureau of Statistics Regarding the Opinion
 27 on the Finding of a State-Owned Company and Enterprise, 2003, at -571-572.

28 ⁴⁴ Section 7 of the 2010 Opinion defines "enterprise with state investment" as follows:

29 In this Opinion, "enterprise with state investment" includes wholly state-owned
 30 companies and wholly state-owned enterprises with state investment as well as
 31 companies controlled by state-owned capital and companies with the participation of
 32 state-owned capital.

1 supervisory, operational, or management work in state-controlled or state-participated
 2 companies or the branches of either, should be considered state personnel.⁴⁵

3 40. In the case of Liu Junjie,⁴⁶ the defendant was the general manager, executive
 4 director, and legal representative (in other words, he was the chief executive officer) of Irico
 5 (Hefei) Photovoltaic Co. Ltd. (“Irico Photovoltaic”). Irico Photovoltaic had been established in
 6 2010 as a wholly-owned subsidiary of Irico Group Electronics Co. Ltd. (“Irico Electronics”),
 7 which itself had been established as a wholly-owned subsidiary of Irico Group in 2004. The
 8 appointment of Liu Junjie to his various posts had been approved in 2010 by Irico Group, the
 9 parent once removed.

10 41. In finding Liu Junjie to be state personnel, the court found Irico Electronics,
 11 Irico Photovoltaic’s parent, to be a “state-controlled company” and stressed that Liu had been
 12 appointed after approval by Irico Group. It seems clear that this decision was correct under the
 13 Criminal Law and the 2010 Opinion. The decision was affirmed on appeal.⁴⁷

14 42. In the case of Liu Maihai,⁴⁸ the defendant was the general manager (chief
 15 executive officer) of Hefei Irico Blu-ray Science & Technology Co. Ltd. (“Irico Blu-ray”). The
 16 economic interest of Irico Group in Irico Blu-ray was much weaker than its interest in Irico
 17 Photovoltaic in the Liu Junjie case. Irico Blu-ray was 54.55% owned by a company called
 18 Shanghai Blu-ray, which in turn was 43.16% owned by Irico Group. Presumably this large
 19 albeit minority stake was enough for Irico Group to exercise control over Shanghai Blu-ray,
 20 and through it over Irico Blu-ray, but its economic interest in Irico Blu-ray was only 23.54%.
 21 The defendant asserted that Shanghai Blu-ray’s investment in Irico Blu-ray came from the

22 Where it is unclear whether an enterprise is an enterprise with state investment,
 23 the delineation should be made according to the principle of “whoever made the
 24 investment has the property right.”

25 ⁴⁵ Plunkett Decl., Ex. 1, Section 6.

26 ⁴⁶ First instance: Plunkett Decl., Ex. 7 (Feb. 28, 2014); Second instance: Plunkett Decl., Ex. 8
 27 (May 6, 2014).

28 ⁴⁷ *See id.* (May 6, 2014).

29 ⁴⁸ First instance: Plunkett Decl., Ex. 9 (April 16, 2014); Second instance: Plunkett Decl., Ex. 10
 30 (Nov. 11, 2014).

1 former's "own" assets, and not from Irico Group,⁴⁹ and that control by Shanghai Blu-ray could
 2 not be deemed control by Irico Group. Finally, he asserted that he had not been appointed in a
 3 way that made him state personnel; instead, he had received his post directly from Irico Blu-
 4 ray.

5 43. The first-instance (trial)⁵⁰ court agreed with the defendant, but on appeal by the
 6 procuratorate, the second-instance court overturned the lower court and found that the
 7 defendant indeed met the definition of "state personnel" and so was guilty as charged.⁵¹

8 44. In the case of Ge Di,⁵² the defendant was the board chairman and general
 9 manager (chief executive officer) of Irico (Hefei) LCD Glass Co. Ltd. ("Irico LCD").
 10 According to the first-instance court, Ge was appointed to his positions upon the approval of
 11 Irico Group. The court characterized Irico Group as a "participating shareholder" (*cangu*). In
 12 fact, Irico Group held a mere 0.27% interest, while the remaining 99.73% was held by a
 13 company called Shaanxi Irico Electronic Glass Co. Ltd. ("Shaanxi Irico").⁵³ In 2010, the year
 14 in which the defendant was alleged to have taken bribes, Shaanxi Irico was a 90.21%-owned
 15 subsidiary of Irico Display.⁵⁴ Its close connection with Irico Group is demonstrated by the fact
 16 that Irico Group directly guaranteed loans to Shaanxi Irico in 2008.⁵⁵

17

18 ⁴⁹ This claim is true by tautology; if Irico Group had been a direct investor, it would have been
 19 a shareholder. The investment came from Shanghai Blu-ray's assets, in which Irico Group had
 a 43.16% interest.

20 ⁵⁰ Since appeals in the Chinese court system are heard *de novo* and therefore are not greatly
 21 different from the original hearing, it is customary to refer to the two levels of adjudication as
 "first instance" and "second instance" instead of "trial" and "appeal" respectively.

22 ⁵¹ *See id.* (Nov. 11, 2014).

23 ⁵² First instance: Plunkett Decl., Ex. 41 (June 30, 2014); Second instance: Plunkett Decl., Ex.
 42 (May 16, 2016).

24 ⁵³ Irico Group's microscopic equity interest was clearly not necessary for it to exercise control.
 25 It is more likely explained by a desire to avoid various disadvantages attendant on Irico LCD's
 26 being a single-shareholder company, an organizational form disfavored under China's
 Company Law.

27 ⁵⁴ *See* Irico Display Annual Report 2010, at 25, available at <http://bit.ly/idar2010>. It is
 described as a "controlled subsidiary" on page 26.

28 ⁵⁵ *See id.* at 35.

45. Both the first-instance and the second-instance courts found these facts sufficient to hold that Ge Di should be deemed “state personnel.” This is so even though Irico LCD was controlled by Irico Group only through a long chain of subsidiaries: Irico Group controlled Irico Electronics, which controlled Irico Display, which controlled Shaanxi Irico, which controlled Irico LCD, Ge’s relevant employer.⁵⁶

46. Given the results in the above three cases, I believe that Irico Display's senior management would, in 2007, also have been considered to have the obligations and liabilities of "state personnel" under China's Criminal Law.

I declare under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct.

Executed this 18th day of July, 2018, in Washington, DC.


Donald Clarke

⁵⁶ It appears that Ge also held positions in other entities affiliated with Irico Group in 2010, see *id.* at 11, but this fact appears to have played no role in the court's decision.

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OTHER POSITIONS AND VISITORSHIPS

- Visiting Professor, Interdisciplinary Center, Herzliya, Israel (April-May 2013)
- Visiting Professor, Duke University Law School, Durham, NC (Spring 2012)
- Visiting Professor, University of California at Los Angeles School of Law, Los Angeles, CA (Fall 2008)
- Visiting Professor, New York University School of Law, New York, NY (2007-08)
- Professor, University of Washington School of Law, Seattle, Washington (1988-2004)
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- Lecturer in Commercial Law of the Far East, Department of Law, School of Oriental and African Studies, University of London, UK (Sept. 1985-July 1988)

EDUCATION

- *Harvard Law School*, Cambridge, Mass., USA (1983-85, 1986-87)—JD cum laude 1987
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- *School of Oriental and African Studies*, University of London, UK (1981-83)—MSc 1983 in Government and Politics of China
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- *Beijing University and Nanjing University*, People's Republic of China (1977-79)—Non-degree academic exchange program
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SCHOLARSHIPS AND FELLOWSHIPS

- Rowdget Young Visiting Fellow, Faculty of Law, University of Hong Kong, June 2005
- Fulbright Research Fellowship, 2003 (Tsinghua University Faculty of Law, Beijing)
- Visiting Fellow, China Law Center, Yale Law School, Fall 2001
- Research Fellowship, National Program, Committee on Scholarly Communication with the People's Republic of China, 1991-92
- Foreign Language and Area Studies Fellowship, 1986-87 (Harvard Law School)
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- Commonwealth Scholarship, 1981-83 (University of London)
- Canada-China Exchange Scholarship, 1977-79 (Peking University, Nanking University)

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- Member, Council on Foreign Relations
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- Member, Executive Committee, East Asian Law & Society Section, Association of American Law Schools (2015-2017)
- Member, Executive Editorial Board, *American Journal of Comparative Law*
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- Member, Academic Advisory Group, US-China Working Group, United States Congress
- Affiliate Professor, University of Washington School of Law
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- Director, Pacific Rim Law and Policy Association (publisher of *Pacific Rim Law and Policy Journal*)
- Member, Advisory Board, Center for Real Estate Law, Peking University Law School

CONSULTANCIES (SELECTED)

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Translations

“The Management Liability of Directors,” *Law in Japan*, vol. 20 (1987): 150-172 (translation from Japanese of M. Kondô, “Torishimariyaku no keiei sekinin”)

LECTURES, INTERVIEWS, PRESENTATIONS, AND CONFERENCE APPEARANCES

“The Supreme Court’s Vitamin C Antitrust Case,” presentation at George Washington University Law School Faculty Workshop, Washington, DC, June 6, 2018

“The Law of Local Government Debt in China,” presentation at *A Legal Revolution: Evolving Jurisprudence in Present Day China*, symposium sponsored by George Washington University International Law Review, Washington, DC, April 2018

“Corporate Governance in China,” invited lecture at Columbia Law School, New York, NY, March 2018

“Local Government Debt in China,” presentation at Center for Chinese Law, Columbia Law School, New York, NY, March 2018

“Anti Anti-Orientalism,” paper presented at *Comparative Law Works in Progress Workshop*, sponsored by American Society of Comparative Law, Princeton, NJ, February 2018

“China’s Law on Supervision,” presentation at *US-China Rule of Law Dialog*, sponsored by National Committee on US-China Relations, New York, NY, November 2017

- Panelist, *Containing the Fallout from the North Korea Crisis: What Role for U.S. and International Law?*, George Washington University Law School, Washington, DC, Sept. 6, 2017
- Panelist, *Anti-Corruption Forever? Xi Jinping's Signature Policy in a Fraught Political Year*, Woodrow Wilson International Center for Scholars, Washington, DC, March 24, 2017
- “Short- and Long-Term Perspectives on Legal Developments in China,” presentation at *Fourth Annual China Law Conference*, University of Toronto Faculty of Law, Toronto, Canada, Feb. 18, 2017
- Panelist, *Reinvigorating Human Rights Policy Toward China*, conference sponsored by McCain Institute for International Leadership (Arizona State University) and Robert Strauss Center for International Security and Law, Washington, DC, Nov. 15-16, 2016
- “Chinese Law and Chinese Language,” paper presented at conference on *How and Why Language Learning Is Useful in China Careers*, sponsored by Princeton in Beijing, Princeton, NJ, Oct. 21-23, 2016
- Participant, Roundtable discussion on China’s Overseas NGO Law, Department of State, Washington, DC, May 13, 2016
- Panel moderator and discussant, *Judicial Reform, Legal Reform and IP in China: A Roundtable Discussion*, United States Patent and Trademark Office, Alexandria, VA, April 14, 2016
- Presentation at *World Development Report 2017 on Governance and the Law, Symposium on The Role of Law in Governance*, World Bank, Washington, DC, April 13, 2016
- “Anti Anti-Orientalism, or Is Chinese Law Different?”, invited lecture, University of British Columbia Law School, Vancouver, Canada, March 30, 2016
- “Legal and Regulatory Reform – or Not: Implications for Business,” presentation at *Third Annual China Law Conference*, University of Toronto Faculty of Law, Toronto, Canada, March 26, 2016
- Participant in *Sixth Sino-American Dialogue on the Rule of Law and Human Rights*, sponsored by the National Council on US-China Relations and the China Foundation for Human Rights Development, Beijing, China, Dec. 6-10, 2015
- “Legal Issues of the Fourth Plenum,” presentation at *5th Annual NYU Conference on Chinese Capital Markets: Assessing the Progress of China’s Economic and Legal Reforms*, New York University, New York, NY, Dec. 5, 2015
- Invited participant, conference on *The Chinese State & Market: Toward the 13th Five-Year Plan*, Center for Strategic and International Studies, Washington, DC, Nov. 24, 2015
- “Is the Xi Administration Interested in the Rule of Law?”, invited lecture at USPTO’s Global IP Academy, Alexandria, VA, July 14, 2015
- “Recent Developments in American Insider Trading Law: Why China Should Not Learn from the US,” invited lecture, China Securities Regulatory Commission, Beijing, China, May 25, 2015
- “Anti Anti-Orientalism, or Is Chinese Law Different?”, invited lecture, University of Michigan Center for Chinese Studies Occasional Lecture Series, Ann Arbor, MI, March 25, 2015
- “Anti Anti-Orientalism, or Is Chinese Law Different?”, keynote address, *Law and the Legal Profession in China Conference*, University of Pittsburgh School of Law, Pittsburgh, PA, Feb. 27, 2015
- “The Bonding Effect in Cross-Listed Chinese Companies: Is It Real?”, conference paper presented at *Public and Private Enforcement of Company Law and Securities Regulation—China and the World*, sponsored by Chinese University of Hong Kong, University of Michigan Law School, and University of Michigan Center for Chinese Studies, Hong Kong, Dec. 13, 2014
- “China’s Stealth Urban Land Revolution,” invited lecture at Fall 2014 Speaker Series, Institute for the Study of International Development, McGill University, Montreal, Canada, Nov. 27, 2014
- “Fourth Plenum Legal Reforms and Their Implications for US-China Relations,” talk presented at conference on *Corruption, Constitutionalism & Control: Implications of the 4th Plenum for China and*

U.S.-China Relations, Woodrow Wilson International Center for Scholars, Washington, DC, Nov. 25, 2014

“Local Government Financing Vehicles in China and their Debt: The Legal Picture,” talk presented at Sigur Center for Asian Studies, George Washington University, Nov. 25, 2014

“Legal Developments in China Since the Third Plenum,” panel presentation at American Association for Chinese Studies Annual Meeting, Washington, DC, Oct. 11, 2014

“Blowback: How China’s Efforts to Bring Private-Sector Standards into the Public Sector Backfired,” paper presentation at conference on *Chinese State Capitalism and Institutional Change: Domestic and Global Implications*, Columbia Law School, New York, NY, June 13-14, 2014

“The Significance of Recent Detentions for the Rule of Law in China,” testimony before the Congressional-Executive Commission on China, Washington, DC, April 8, 2014

Interviewed for the United States-China Policy Foundation’s *China Forum*, available at <http://youtu.be/7hfwjStUcDs>, April 2, 2014

Moderator for panel on “Wider Implications of Asian Maritime Tensions,” Mansfield Foundation conference on *Maritime and Territorial Disputes in East Asian Waters*, Washington, DC, Feb. 12, 2014

Speaker at Third Annual China Intellectual Property Conference, George Washington University Law School, Washington, DC, Dec. 11, 2013

“Legal Aspects of Entrepreneurship in China,” presentation at US-China Legal Exchange (co-organized by U.S. Department of Commerce and P.R.C. Ministry of Commerce), George Washington University Law School, Washington, DC, Dec. 3, 2013

“China’s Stealth Urban Land Revolution,” seminar presentation, Yale Law School, April 4, 2013

“China’s Stealth Urban Land Revolution,” seminar presentation, Columbia Law School, March 1, 2013

Participant in *Fourth Sino-American Dialog on Rule of Law and Human Rights*, sponsored by the National Council on US-China Relations and the China Foundation for Human Rights Development, Haikou, China, Dec. 3-7, 2012

Discussant at *Festschrift Conference in Honor of Professor John Haley: Law in Japan and Its Role in Asia—Between East and West*, University of Washington School of Law, Seattle, Oct. 19, 2012

“China’s Stealth Urban Land Revolution,” invited lecture at University of Amsterdam, June 18, 2012

“China’s Informal Constitutional Order,” presentation at *Social Change and the Constitution: A Conference on the Occasion of the 30th Anniversary of the 1982 Constitution of the People’s Republic of China*, Free University of Berlin, June 15-17, 2012

“Local Government Bonds in China: What’s Behind Them?”, presentation at *Shanghai Forum 2012*, sponsored by Fudan University and Korean Foundation for Advanced Studies, Shanghai, May 27, 2012 (in Chinese)

“China’s Stealth Urban Land Revolution,” presentation at *Perspectives on Chinese Law* conference, George Washington University Law School, Washington, DC, April 13, 2012

Panelist in “Who Makes Your iPhone? China Migration, Labor, and Human Rights,” *Program in Public Law*, Duke Law School, Durham, NC, April 4, 2012

Panelist in “China’s Environmental Policy,” Duke Law School, Durham, NC, March 29, 2012

Interviewed by Radio Australia on recent developments in Chinese law, Mar. 21, 2012

Roundtable participant in conference on *Democracy in China and Southeast Asia: Local and National Perspectives*, Princeton University, Princeton, NJ, March 15, 2012

“China’s Stealth Urban Land Revolution,” Duke Law School, Durham, NC, Feb. 29, 2012

Participated in panel on “The Rule of Law and Economic Background” at conference on *Patents, Trade, and Innovation in China*, George Washington University Law School, Washington, DC, Dec. 13, 2011

- Panelist at NYU Law School's *17th Annual Timothy A. Gelatt Dialogue on the Rule of Law in Asia, China's Quest for Justice: Law and Legal Institutions Since the Empire's Collapse*, Nov. 7, 2011
- "Zhongguo de yinxing chengshi tudi geming" (China's Stealth Urban Land Revolution), presentation to Hongfan Institute of Law and Economics, Beijing, June 25, 2011 (in Chinese)
- "Recent Developments in China's Legal System and Their Implications for Rule of Law," presentation sponsored by Economist Intelligence Unit, Shanghai, May 27, 2011
- "Derivative Actions in China," invited lecture at Hong Kong University Faculty of Law, Hong Kong, May 12, 2011
- Commentator, conference on *Criminal Justice in China: Comparative Perspectives*, sponsored by Chinese University of Hong Kong, Hong Kong, May 7-8, 2011
- "Derivative Actions in China," presentation to faculty at Fordham University Law School, New York, March 7, 2011
- "Derivative Actions in China," presentation to faculty at Duke University Law School, Durham, March 3, 2011
- Discussant, *Second Sino-American Dialogue on the Rule of Law and Human Rights*, sponsored by the National Council on US-China Relations and the China Foundation for Human Rights Development, Xiamen, Dec. 7-8, 2011
- "Transnational Litigation Involving China," presentation at conference on *Law and Business in China*, sponsored by the Faculty of Law and the Asian Studies Program of Pontificia Universidad Católica de Chile, Santiago, Nov. 25-26, 2010
- "Understanding the Chinese Legal System: Searching for the Right Paradigm," invited lecture at University of Buenos Aires Faculty of Law, Buenos Aires, Nov. 22, 2010
- "Is Chinese Law Different?", invited lecture at Universidad Torcuato Di Tella Faculty of Law, Buenos Aires, Nov. 22, 2010
- "Governance and China's Evolving Relationship with Its Citizens," panel presentation at *Economist* conference *China Summit: China and the New World Disorder*, Beijing, Nov. 3, 2010
- "Derivative Actions in the People's Republic of China," presentation at conference on *The Prospect of Structural Reform of the Corporate Legal System*, sponsored by Tsinghua University Faculty of Law, Beijing, Oct. 30-31, 2010
- "The Interface Between the Regulation of China's Internal Market and the Global Trading System," seminar presentation, Yale Law School, Oct. 5, 2010
- "The Interface Between the Regulation of China's Internal Market and the Global Trading System," seminar presentation, Columbia Law School, New York, Sept. 28, 2010
- Commentator at conference on *The Global Financial Crisis and China's Development*, sponsored by the University of Chicago Center in Beijing and Renmin University School of Economics, Beijing, July 30-31, 2010
- "Local Experimentation in the Chinese Legislative System," paper presented at *China-US Rule of Law Dialogue*, sponsored by the China-US Exchange Foundation, Beijing, July 29-30, 2010
- "Shareholder Derivative Suits in China," invited lecture, Hong Kong University Faculty of Law, Hong Kong, June 1, 2010
- Panelist on "Business Law" panel at George Washington University Law School- Georgetown University Law Center conference *Six Decades of Asian Law: A Celebration of Professor Jerome Cohen*, Washington, D.C., February 19, 2010
- "Lawyers and the State in China: Recent Developments," testimony at hearing on *Human Rights and Rule of Law in China*, Congressional-Executive Commission on China, Washington, D.C., October 7, 2009

- “Trends in Comparative Corporate Law Scholarship,” panel presentation at Association of American Law Schools Mid-Year Conference, Long Beach, California, June 9, 2009
- “Who and What Matters in Chinese Stock Markets: Implications for Regulation,” presentation at symposium *A New Era Dawns for Asian Capital Markets*, Asia Law Society, University of Michigan Law School, Ann Arbor, 21 March 2009
- “The Concept of the Extra-Legal in Chinese Law,” presentation at Global Law Workshop, George Washington University Law School, Washington, D.C., 23 February 2009
- “Is Chinese Law Different?”, lecture presented at United States Naval Academy, Annapolis, Maryland, 13 February 2009
- “Does Chinese Law Matter?”, presentation to United States Treasury Department, Washington, D.C., 12 February 2009
- “The Concept of the Extra-Legal in Chinese Law and Its Significance,” lecture presented at seminar *Are Politics Really in Command? China and the Rule of Law*, Norwegian Centre for Human Rights, China Programme, Oslo, 16 January 2009
- “Private Enforcement of the Public Interest in China: Potential and Pitfalls,” lecture presented at UCLA Center for Chinese Studies, Los Angeles, 24 November 2008
- “The Ecology of Corporate Governance in China,” presentation at UCLA School of Law Faculty Colloquium, Los Angeles, 14 November 2008
- “Selfishness in the Public Interest? The ‘Private Attorney-General’ in China,” lecture presented at School of International Relations and Pacific Studies, University of California at San Diego, 30 October 2008
- “New Developments in Chinese Property Law,” presentation at 2008 US-China Business Law Conference at UCLA, Los Angeles, 24 October 2008
- “The Ecology of Corporate Governance in China,” presentation at University of Illinois Law School Faculty Workshop, Champaign, Ill., 20 October 2008
- “Delaware’s Dysfunctional Derivative Suit Doctrine,” lecture presented at Faculty of Law, Renmin University, Beijing, 11 June 2008 (in Chinese)
- “Three Concepts of the Independent Director,” paper presented at Contemporary Corporate Law Scholarship Reading Group (seminar course conducted by Prof. Jeffrey Gordon, Columbia Law School), 23 April 2008
- “Chinese Corporate Governance in Global Context,” lecture presented at Yale University, sponsored by Yale Working Group on Corporate Governance and Millstein Center for Corporate Governance and Performance, 22 April 2008
- “Corporate Governance Institutions in China,” presentation at New York University School of Law Faculty Workshop, 14 April 2008
- Commentator at *Conference on Law, Commerce and Development*, New York University School of Law, New York, 12 April 2008
- Discussant at panel on *New Dimensions in China Watching: Internet Forums and the Study of Contemporary China*, Association for Asian Studies Annual Meeting, Atlanta, 3 April 2008
- “Chinese Corporate Governance: All Sizzle, No Steak?”, roundtable presentation at Council on Foreign Relations, New York, 19 November 2007
- “The Institutional Environment of Chinese Corporate Governance,” lecture presented at China House series on *The Legal Infrastructure of New China*, New York University, New York, 14 November 2007
- “Forum Non Conveniens Issues in China-Related Litigation,” presentation at *Global Justice Forum*, Columbia Law School, New York, 2 November 2007

- “The Ecology of Chinese Corporate Governance,” presentation at Chinese Law Workshop, Yale Law School, New Haven, 29 October 2007
- “Private Attorney-General Litigation in China,” paper presented at conference on *Chinese Justice*, Fairbank Center for East Asian Research, Harvard University, 12 October 2007
- “The Ecology of Chinese Corporate Governance,” lecture delivered at Max Planck Institute, Hamburg, Germany, 30 July 2007
- Discussant at panel on *Comparative Corporate Governance: Law in Context*, Law and Society Association Annual Meeting, Berlin, 26 July 2007
- “The Ecology of Chinese Corporate Governance,” paper presented at panel on *Law and Development: The China Consensus?*, Law and Society Association Annual Meeting, Berlin, 26 July 2007
- “China: Creating a Legal System for a Market Economy,” report delivered at symposium on *Development and Reform of China’s Legal and Judicial System: Review and Prospect*, sponsored by the Asian Development Bank, Beijing, 14-15 May 2007
- Commentator, conference on *China’s Financial System Reforms and Governance*, School of Advanced International Studies, Johns Hopkins University, Washington DC, 16 April 2007
- “Is Chinese Law Different?”, public lecture sponsored by East Asian Studies Program, Princeton University, Princeton, New Jersey, 10 April 2007
- “The Role of Law in China’s Economic Development,” public lecture sponsored by Department of Economics, Middlebury College, Middlebury, Vermont, 5 April 2007
- Panelist, “The Academic Perspective and Recent Research,” *OECD-China Policy Dialogue on Corporate Governance*, sponsored by the OECD, Shanghai Stock Exchange, State Assets Supervision and Administration Commission, Chinese Securities Regulatory Commission, Development Research Center, Government of Japan, Global Corporate Governance Forum, and Millstein Center for Corporate Governance and Performance at Yale School of Management, 29-30 March 2007
- Public lecture, “The Ecology of Chinese Corporate Governance,” sponsored by Asian Institute of International Financial Law, Faculty of Law, University of Hong Kong, 2 March 2007
- “The Rule of Law in China,” roundtable discussion (with Jerome A. Cohen), MITRE Corporation, Washington, DC, 2 February 2007
- Guest lecturer, National Taiwan University Faculty of Law, “The Institutional Environment of Corporate Governance in China” (in Chinese), 22 December 2006
- Guest lecturer, New York University Law School, “Chinese Constitutional Law”, 14 November 2006
- “The Institutional Environment of Corporate Governance in China”, lecture presented as part of Clarke Program Colloquium Series, Cornell Law School, 3 November 2006
- “The Role of Non-Legal Institutions in Chinese Corporate Governance”, paper presented at authors’ workshop on *A Decade After Crisis: The Transformation of Corporate Governance in East Asia* sponsored by the Center of Excellence Program in Soft Law at the University of Tokyo, the Center on Financial Law at Seoul National University, and the Center for Japanese Legal Studies at Columbia Law School, Tokyo, 1 October 2006
- “The Institutional Environment of Chinese Corporate Governance”, paper presented at panel on *Legal Aspects of the Economic Transformation in China*, annual conference of the International Society for New Institutional Economics, Boulder, Colorado, 23 September 2006
- “Law and the Economy in China: The Past Decade”, paper presented at authors’ workshop on *Developments in Chinese Law: The Last Ten Years*, sponsored by *The China Quarterly* and All Souls College, Oxford University, Oxford, UK, 15 September 2006

- “The Institutional Environment of Corporate Governance in China and Its Policy Implications”, paper presented at conference on *Corporate Governance in East Asia: Culture, Psychology, Economics and Law*, Berkeley Center for Law, Business and the Economy, Boalt Hall School of Law, 5 May 2006
- Guest lecturer, Yale Law School, “Recent Revisions to China’s Securities Law”, 4 April 2006
- Commentator, Roundtable on “China’s Emerging Financial Markets: Opportunities and Obstacles,” Transactional Studies Program, Columbia Law School, New York, 19 January 2006
- Speaker at Timothy A. Gelatt Memorial Dialog on Law and Development in Asia, New York University Law School, New York, 18 January 2006
- Speaker and participant in workshop on administrative rule-making under China’s new Securities Law, sponsored by the FIRST Initiative, the Finance and Economics Committee of the National People’s Congress, and the World Bank, Beijing, 14-15 January 2006
- Panelist, “The Globalization of American Law? Comparative Law and the New Legal Transplants”, Section on Comparative Law, American Association of Law Schools annual meeting, Washington, DC, 5 January 2006
- Panelist, “Improving the Fairness and Transparency of Judicial Decisions”, conference on *Rule of Law Developments in China*, sponsored by the Bureau of Democracy, Human Rights, and Labor, Department of State, Washington, DC, 7 November 2005
- Interviewed on BBC World Service on recent developments in death penalty procedures in China, 26 October 2005
- “Lost in Translation: Legal Transplants in Chinese Corporate Law”, Rowdget Young Visiting Fellow Lecture, University of Hong Kong Faculty of Law, Hong Kong, 4 June 2005
- “The Independent Director in Chinese Corporate Governance”, invited paper presented at 4th Asian Corporate Governance Conference, co-hosted by Asian Institute of Corporate Governance, Korea University and Center for Financial Law, Seoul National University, sponsored by World Bank Global Corporate Governance Forum, Seoul, 19-20 May 2005
- “The Legacy of History in China’s Legal System”, paper presented at conference on *The Rule of Law: Chinese Law and Business*, Centre for Socio-Legal Studies, Oxford University, May 11-13, 2005
- “The Emerging Private Sector and China’s Legal System”, paper presented at conference on *China’s Economic and Sociopolitical Transformation: Measuring China’s Emerging Private Sector and Its Impact*, Washington, DC, 22 April 2005
- “How Do We Know When an Enterprise Exists? Unanswerable Questions and Legal Polycentricity in China”, paper presented at conference on *New Scholarship in Chinese Law: A Celebration in Honor of Stanley Lubman*, Center for Chinese Legal Studies, Columbia Law School, New York, 15 April 2005
- “Lost in Translation? Corporate Law in China”, paper presented at conference on *Asia in a Globalizing World*, Center for East Asian and Pacific Studies, University of Illinois at Urbana-Champaign, 9 April 2005
- Guest lecturer in course on “China and Globalization”, Prof. Reuven Avi-Yonah, University of Michigan Law School, Ann Arbor, 1 April 2005
- “Law, Institutions, and Property Rights”, paper presented at conference on *China’s Economy: Retrospect and Prospect*, Woodrow Wilson International Center for Scholars, Washington, DC, 2 March 2005
- “Insider Trading Law in the United States and China”, lecture presented in Chinese at East China University of Politics and Law, Shanghai, 25 November 2004
- “Law, Property Rights, and Institutions” (with Peter Murrell and Susan Whiting), paper presented at conference on *China’s Economic Transition: Origins, Mechanisms, and Consequences* (Part II), University of Pittsburgh, 5-7 November 2004

- “The Independent Director in Chinese Corporate Governance”, opening paper presented at conference on *Amendment of the Company Law* organized by the Legislative Affairs Office of the State Council, the China Securities Regulatory Commission, and the Shanghai Stock Exchange, 10 October 2004
- “Insider Trading Law in the United States and China”, talk presented to Shanghai Institute of Law and Economics, Beijing, 28 September 2004
- “China’s Proposed Bankruptcy Law”, commentator at conference on *Legal and Financial Infrastructure Requirements for Residential Mortgage Securitization in China* organized by Beijing University School of Law, Center for Real Estate Law and Financial Law Institute, Beijing, 17 July 2004
- “Does Law Matter in China?”, talk presented at Global Business Center, University of Washington School of Business, 15 January 2004
- “Why China Should Not Adopt United States Insider Trading Law”, paper presented at conference on *Corporate Fraud and Governance: American and Chinese Perspectives* organized by Shanghai Jiaotong University and New York University School of Law, Shanghai, 16 December 2003
- “Human Rights and Culture”, paper presented at conference on *Sino-U.S. Human Rights Conference* organized by Georgetown University Law Center, Beijing, 14 December 2003
- “The History of Corporate Governance in China”, commentator at conference organized by Shanghai Institute of Law and Economics, Beijing, 15 November 2003
- “Professional Ethics of Defense Lawyers”, commentator at conference on *The Defense Functions of Lawyers and Judicial Justice* organized by the All-China Lawyers Association, the American Bar Association, Renmin University of China, and New York University School of Law, Beijing, 21 September 2003
- “The Independent Director in Chinese Corporate Governance”, lecture presented at Tsinghua University Faculty of Law, Beijing, 10 April 2003
- “The Independent Director in Chinese Corporate Governance”, paper presented to the School of Business and Management, Hong Kong University of Science and Technology, 7 March 2003
- “Assessing the Value of Law in China’s Economy” (with Peter Murrell and Susan Whiting), paper presented at conference on *China’s Economic Transition: Origins, Mechanisms, and Consequences (Part I)*, University of Toronto, 15-17 November 2002
- “China’s Entry into the WTO: Prospects for Compliance”, paper presented at conference on *China’s Accession to the World Trade Organization*, Georgetown University Law Center, 10 Oct. 2002
- “How Do We Know When an Enterprise Exists? Unanswerable Questions and Legal Polycentricity in China”, paper presented at conference on *The Reform of Corporate Law Under Global Competition*, Commercial Law Research Center of the Faculty of Law, Tsinghua University, Beijing, China, 15 Sept. 2002
- “Zhongguo youdai fazhan duoyuanhua de jiandu jizhi” (China Has Yet to Develop a Multidimensional Monitoring Mechanism), 21 *Shiji Jingji Baodao* (21st Century Economic Report), 19 Aug. 2002, p. 39, col. 1 (interview)
- Testified before the Congressional-Executive Commission on China, Washington, D.C., on issues relating to China’s compliance with its WTO commitments, 6 June 2002
- “Business Regulation in the Bureaucratic State: Enterprise Law in China”, paper presented at panel on *The Rule of Law and Enterprise Reform in China*, Association for Asian Studies annual meeting, 5 April 2002
- “What WTO Accession Does Not Mean for China”, paper presented at panel on *WTO and the International Rule of Law*, American Society of International Law annual meeting, 15 March 2002
- Testified before United States-China Security Review Commission, Washington, DC, on issues relating to China’s WTO accession, 18 Jan. 2002

- “The Independent Director in Chinese Corporate Governance”, paper presented at conference on “Protection of Investors’ Interests: International Experience and Chinese Practice”, Commercial Law Research Center of the Faculty of Law, Tsinghua University, Beijing, China, 18-19 November 2001
- “Economic Development and the Rights Hypothesis: The China Problem”, paper presented at conference on *Law Reform in Developing and Transitional Economies*, Ulaanbaatar, Mongolia, 2-3 July 2001
- Interviewed for feature entitled “Detained in China”, broadcast on PBS, *The News Hour with Jim Lehrer*, 18 May 2001 <http://www.pbs.org/newshour/bb/asia/jan-june01/detained_05-18.html>
- “Empirical Research in Chinese Law,” paper presented to Rule of Law Workshop, Stanford Law School, 18 April 2001
- “Transparency in China’s Regulation of International Trade,” presentation made to audiences from Chinese government, business, and academia in Beijing and Shanghai as part of 5-member United States government mission, 13-25 March 2000
- “Courts and Markets in Post-Socialist Transition: China,” paper presented at workshop on *Courts and Markets in Post-Socialist Transition*, University of Wisconsin School of Law, 3 March 2000
- “Incentives and the Top-Down Model of Regulation in Chinese Land Law,” paper presented (in Chinese) at *International Conference on the Legal Framework for Rural Land Use Rights in China*, China Institute for Reform and Development, Haikou, Hainan Province, China, 12-14 January 2000
- “Corporate Governance in China,” paper presented to members of Project on Corporate Governance in China, Stanford University, Stanford, California, 29 October 1999
- “Alternative Approaches to Chinese Law,” lecture delivered at UCLA School of Law, Los Angeles, 28 October 1999
- Panelist on “Rule of Law in China – Recent Developments and Prospects,” Inaugural Session of Global Business Briefing Series, Pacific Council on International Relations, Los Angeles, 28 October 1999
- “Misunderstanding Chinese Law: The Lure of the ‘Rule of Law’ Paradigm,” lecture delivered at Faculty of Law, City University of Hong Kong, 27 September 1999
- Guest lecturer, Chinese administrative law class of Prof. Wang Xixin, Beijing University Faculty of Law, Beijing, China, 23 September 1999
- “Bankruptcy in Capitalist and Reforming Socialist Economies,” brief course taught to delegation of North Korean legal officials and academics at Beijing University, Beijing, China, 20-23 September 1999
- “Misunderstanding Chinese Law: The Lure of the ‘Rule of Law’ Paradigm,” lecture delivered at Faculty of Law, Waseda University, Tokyo, Japan, 23 June 1999
- “The Enforcement of Civil Judgments in China,” lecture delivered at Faculty of Law, Waseda University, Tokyo, Japan, 19 June 1999
- “China’s Revised Criminal Law,” paper presented at conference on *Contemporary Chinese Legal Development*, sponsored by Chinese Law Society of America, Harvard Law School, Cambridge, Mass., 26-27 March 1999
- “Alternative Approaches to Chinese Law,” lecture delivered at Yale Law School, 25 March 1999
- Commentator, conference on *Administrative Law Reform in China*, sponsored by UCLA Center for Chinese Studies, International Studies & Overseas Programs, UCLA School of Law and Southern California China Colloquium, Los Angeles, 6 March 1999
- Participant, *U.S.-China Symposium on the Legal Protection of Human Rights*, The Aspen Institute, 11-13 December 1998

- “Private Enforcement of Intellectual Property Rights,” paper presented at *Sino-U.S. Conference on Intellectual Property Rights and Economic Development: 1998 Chongqing*, sponsored by the National Bureau of Asian Research, Chongqing, China, 16-18 September 1998
- Commentator, conference on *Law and Development in Asia*, co-sponsored by Asian Development Bank and Harvard University, Council on Foreign Relations, New York, 21 May 1998
- “Introduction to U.S. Capital Markets for Chinese Enterprises,” speech (in Chinese) presented at Investment Promotion Forum sponsored by United Nations Industrial Development Organization, Beijing, 31 March 1998
- “Legal Order as a Prerequisite for Cooperation: The China Problem,” paper presented at *Inaugural University of California at San Diego Social Sciences Research Conference on Cooperation Under Difficult Conditions*, Graduate School of International Relations and Pacific Studies, 18 October 1997
- “Recent Developments in Criminal and Administrative Punishments in China,” paper presented at University of Washington School of Law Conference on Asian Law, Seattle, Washington, 3 August 1996
- “Enforcement of International Awards Involving China and Hong Kong,” paper presented at EuroForum conference on *Dispute Resolution in China and Hong Kong*, London, 31 May 1996
- “China and the WTO,” paper presented at American Conference Institute conference on *Doing Business in China and Hong Kong*, New York, 10 May 1996
- “Recent Developments in Chinese Foreign Investment Law,” talk presented at conference on *Trade and Investment in Emerging Markets: China and India*, New York University School of Law, 17 November 1995
- Commentator on China at *Timothy A. Gelatt Dialogue on Law and Development in Asia*, New York University School of Law, 14 September 1995
- “Round Pegs and Square Holes: China and the GATT,” paper presented at panel on *China in the World Economic Order* at the annual meeting of the Association for Asian Studies, Washington, DC, April 1995
- “Civil Rights in China,” talk delivered to Civil Rights Committee of the Seattle-King County Bar Association, Seattle, March 1995
- “Foreign Business Law and China’s Application to the GATT/WTO,” paper presented at 1990 Institute Conference on Chinese Foreign Trade and Investment Law, San Francisco, March 1995
- “China and the GATT/WTO,” talk delivered to the World Affairs Club, Juneau, Alaska, March 1995
- “The Chinese Court System,” paper presented at *Winter Workshop on East Asian Law*, Center for Pacific Rim Studies, University of California at Los Angeles, January 1995
- “Enforcement of Civil Judgments in a Changing Society: A Chinese Example,” paper presented at annual meeting of the Law and Society Association, Phoenix, Arizona, 17 June 1994
- “The Enforcement of Civil and Economic Judgments in China,” paper presented at symposium on *The Chinese Legal System*, sponsored by the China Quarterly and the School of Oriental and African Studies, University of London, London, U.K., 10-12 May 1994
- “GATT Membership for China?,” paper presented at symposium on *Pacific Rim Trade*, University of Puget Sound School of Law, Washington, 5 November 1993
- “The Creation of a Legal Structure for Market Institutions in China,” paper presented at conference on *The Evolution of Market Institutions in Transition Economies*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, 14-15 May 1993
- Chair/discussant at panel on “Theoretical Perspectives in China’s Legal Reform,” conference on *Chinese Law -- A Re-Examination of the Field: Theoretical and Methodological Approaches to the Study of Chinese Law*, Faculty of Law, University of British Columbia, Vancouver, 22 March 1993

- “Research Methodologies in Chinese Law,” paper presented at conference on *Chinese Law -- A Re-Examination of the Field: Theoretical and Methodological Approaches to the Study of Chinese Law*, Faculty of Law, University of British Columbia, Vancouver, 22 March 1993
- “Enforcement of Civil Judgments in China,” talk delivered at *China Studies Seminar*, University of British Columbia, October 1992
- Discussant at conference on *The Modernization of Chinese Law on Both Sides of the Taiwan Straits*, National Taiwan University College of Law, September 1992
- “Enforcement of Civil Judgments in the People’s Republic of China: Notes from the Field,” talk delivered at Attorney-General’s Chambers, Hong Kong, August 1992
- “Dispute Resolution in China,” talk delivered at Chinese University of Hong Kong, November 1991
- Interviewed on modern Chinese law for program on East Asian legal systems broadcast by BBC World Service (London), September 1991
- Discussant at panel on *New Perspectives on Chinese Economic Development*, Western Economic Association Annual Conference, Seattle, 30 June-3 July 1991
- “The Trials of the June 4th Defendants,” talk delivered at *East Asian Legal Studies Lunchtime Colloquium*, Harvard Law School, 22 March 1991
- “What’s Law Got to Do with It? Legal Institutions and Economic Reform in China,” talk delivered at *East Asian Legal Studies Workshop*, Harvard Law School, 21 March 1991
- Guest lecturer, Chinese law class of Prof. William C. Jones, Washington University School of Law, St. Louis, Missouri, 30 January 1991
- “Legal Problems of Industrial Economic Reform in China,” talk delivered to *Faculty Forum*, Washington University School of Law, St. Louis, Missouri, 30 January 1991
- Speaker and panel chairman, “Chinese Business Law,” at *China Trade Update: Doing Business with China in the 1990s*, conference sponsored by the Washington State China Relations Council, Seattle, Washington, 5 November 1990
- “The Future of Democracy in China,” panel discussion sponsored by the Council of International Organizations, Citizens International Center, Seattle, Washington, 21 April 1990
- “Why Laws Fail: Central Legislation and the Structure of the Chinese Polity,” paper delivered at *Winter Workshop on East Asian Law*, Center for Pacific Rim Studies, University of California at Los Angeles, 20 January 1990
- “The Legal Background to the Behavior of State-Owned Enterprises,” paper delivered at conference on *Ownership Reforms and Efficiency of State-Owned Enterprises* sponsored by the Institute of Economics of the Chinese Academy of Social Sciences and the Ford Foundation, Shenzhen, China, 6 January 1990
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